UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	Case No. 21-30589(MBK)
LTL MANAGEMENT LLC,	
Debtor.	
LTL MANAGEMENT, LLC,	Adversary No. 21-03032(MBK)
Plaintiff,	
v.	Clarkson S. Fisher U.S. Courthouse 402 East State Street Trenton, NJ 08608
THOSE PARTIES LISTED ON APPENDIX A TO THE COMPLAINT, ET AL.,	
Defendants.	Friday, February 18, 2022 9:01 a.m.

TRANSCRIPT OF TRIAL DAY FIVE
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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movants' own experts on this point. Again, Mr. Burian, the LTL transaction's a single pre-planned integrated transaction comprised of five related interdependent steps. He said it again, it's a single transaction and the debtor was created for one purpose, bankruptcy.

And, again, Mr. Diaz, the defined term he used to cover both the restructuring and the bankruptcy was "integrated transaction series." And, in fact, he went on to say ignoring JJCI's financial distress is the purposely -- or purposefully misapprehend the facts that led to this bankruptcy proceeding. You would be misapprehending the facts, ignoring the facts. It's interesting, notwithstanding that, he did not analysis of -- he did not focus on Old JJCI. He focused on J&J because that's what the movants asked him to do.

And Mr. Burian, just to go on, basically said, well, not only does his report basically contradict what you're hearing from the movants that Old JJCI is irrelevant, he spent 17 slides in his report on the issue of whether Old JJCI was in financial distress. And, of course, if you look at this adjusted income chart that he used, this is the chart that makes very plain that he ignored talc litigation costs. So you look at 2020 and 2021, he has the adjusted income going up and he has it going up because he hasn't accounted for any of the talc litigation costs. That's how he got there.

So I think Your Honor's pretty well aware the basics

of the corporate restructuring. At this point, this is just a depiction of it that we put together before. The one thing I would note, of course, is, you know, the funding agreement here is different from all the other cases in the sense that it includes also a Johnson & Johnson, the ultimate parent, agreeing to obligate itself to the extent of the value of Old JJCI. So you have basically two sources of asset availability to LTL.

So Mr. Molton yesterday, again, used the phrase BadCo that LTL is a BadCo. Otherwise, I think until that, the movants were pretty careful in not using that term. I mean you saw that Mr. Diaz referred to it as I think a talc powder company or something like that. But here we know that it actually does, aside from the funding agreement or in addition to the funding agreement, it has significant assets.

And, of course, it came into this court with an agreement from J&J and New JJCI to -- for them to advance under the funding agreement $2 billion to be deposited in a QSF. And, of course, we've put that off. You know, we filed a motion to have Your Honor approve that. We put that off at the request of the other side.

But, again, you heard in the testimony I think from Mr. Kim that that was done to show the good faith. And I think Mr. Wuesthoff said the same thing, to show the good faith here that we're serious, that we're willing to put up a lot of money

as a start here just to not even have to argue about this issue of whether there's undercapitalization or unfairness or harm. We just wanted to be past that issue. We want to get to the guts of this case, which is to negotiate an agreement on a resolution of the talc claims.

Now the funding agreement, I want to spend a little time on this because it's obviously extremely important to understanding what the situation is. But, again, you have two payors here. You have not only JJCI, but you have J&J. And part of the reason for that, Your Honor, is that in the other cases, we heard complaints about, w ell, but we're worried that the entity, the obligor, the payor in those cases is going to be dividending assets away -- dividending assets up to the parent. At the end of the day, we're going to be left with an empty bag.

And, you know, we try to learn from the other cases. And so we thought let's take that issue off the table. We'll actually have an obligation from the ultimate parent. So that was based on learning that we had received from the North Carolina cases, and frankly, you know, we've been criticized greatly for forum shopping and filing in North Carolina. But part of the thinking was that we have a jurisdiction that's actually confronted some of these issues. We tried to learn from those issue and actually address some of those issues in how things were designed in connection with the restructuring.

Also, I should just point out because of all the time that was spent trying to suggest some nefarious connection between the corporate restructuring and the spinoff, the fact that J&J is now including as a payor or isn't included as a payor in this funding agreement should eliminate any concern about that because it doesn't matter. If assets are spun out, if that actually occurs, a transaction like that occurs, there's full protection because J&J is sitting there with an obligation to pay up to the value of Old JJCI.

And what's important, unlike the other cases, this funding agreement sets the floor on the value. It sets a floor. So whatever the value was basically the day because the restructuring, that value is locked in. So it can only go up. It can't go down. That's unlike other cases where it's potentially the payor based on developments with its business operations or what have you, you know, could suffer some diminution in value. That can't happen here.

There's another reason for doing this, again, to try to eliminate some of the objections and concerns that we heard with respect to the earlier funding agreements.

THE COURT: Mr. Gordon, you said value of Old JJCI. It's the value of New JJCI, is it not, under the funding agreement?

MR. GORDON: Well, no, it's the value of Old JJCI. Actually, whatever that -- I hope I'm getting this right. It's

whatever that value was basically at the time that the restructuring occurred. Let me just -- maybe my nomenclature's off.

THE COURT: I thought it's the 60 billion cap --

MR. GORDON: Correct. It's the value of Old JJCI.

THE COURT: Right.

MR. GORDON: But Mr. Prieto pointed out excluding the talc liability. So it's the value whatever it was on the day before excluding the talc liability. That's the whole idea with these funding agreements. It's to basically to be able to say to the Court, to say to the parties, look, you haven't been hurt because the entity that was standing behind or the value of assets that were effectively standing behind the liability or were available to pay the liability, that value is fully preserved through that funding agreement. So what that was is fully preserved.

The only difference is is that instead of having the company there, you have a funding agreement that provides direct right to those assets through this funding agreement.

THE COURT: All right.

MR. GORDON: Did I answer your question, Your Honor?

THE COURT: Yeah. I guess I have to take a look back. I thought the language of the funding agreement, it references the value of New JJCI. And I've seen it stated differently --

MR. GORDON: Yeah.

THE COURT: -- in different briefs.

MR. GORDON: Yeah. I think what you're referring -- and these are good questions, Your Honor. This is complicated, so I appreciate your asking me. I think what you're referring to is the fact that, again, we tried to make clear in this funding agreement that if the value of New JJCI actually goes up post the transaction, then the value under the funding agreement also goes up.

And that goes to my point about it sets a floor based on the value of what Old JJCI was in the moment in time before this transaction minus or excluding the talc costs. And then if that value goes up, the estate would get the benefit of that value, as well.

THE COURT: Okay. Thank you.

MR. GORDON: And I just wanted to point out also in this slide, and I think Your Honor's probably seen there's literally no conditions or any material conditions on the permitted funding uses under this document. I'll come back to this.

So I did want to focus on permitted funding use because the other side I think has fashioned a new argument that we hadn't heard before with respect to the funding agreement. So there's basically two different scenarios where funding is available.

The first is funding in the tort system. And as you would expect, what that funding says is that the payors are obligated to pay the liabilities to the extent they're established by a judgement or a settlement in the tort system. That's what you would expect and that's what happens. You want funds available to pay settlements, to pay judgments in the tort system. So it makes very clear this is what we're talking about if there's no proceeding in bankruptcy. Whether there was no case filed or whether the case is filed or dismissed, the money's available for that purpose.

And you can imagine, Your Honor, by the way, the hue and cry you would have heard if this provision weren't in there because they would have said that we've manipulated the whole system because you filed bankruptcy and now you're going to tell the Court you can't dismiss our case because there's no money available if we go back in the tort system.

So this is there to protect the claimants. It's there to assure this isn't treated or consider a fraudulent conveyance. The idea was and the intent was the claimants are covered either way in bankruptcy or outside.

Now where the criticism I think has been focused is on this provision. And this talks about how the funding is used if a bankruptcy case is commenced. And what it talks about is if the payors are obligated to pay the liabilities in connection with the funding of one or more trusts for the

benefit of claimants created pursuant to a plan that's confirmed by a final non-appealable order of the bankruptcy court and, to the extent required, the district court.

And all that -- you know, the other side has said that puts the claimants in a worse position. It puts a variety of limitations and conditions on the funding. It's not fair. It doesn't exist in the tort system. And I would say to that, Your Honor, all this does is recognize the way the rules and the law work in bankruptcy. The idea is that if you have a bankruptcy case, the intent is to ultimately reach a plan or reorganization and then you want the funding available to fund the trust. This is what has happened in every asbestos case, Your Honor. This is where these cases end up.

And you heard some hypotheticals. I think Mr. Diaz said, well, what if the stay were lifted -- if the stay is lifted and somebody's allowed to go back and collect a judgment, the money wouldn't be available. That's technically correct, but we wouldn't expect that to happen in a bankruptcy case.

The way I think about it is in these mass tort cases, you either have a bankruptcy case or you don't. And if you don't have a bankruptcy case, then you have the money available to you to pay the judgments and the settlements in the tort system. And if you do have a bankruptcy case, it's available for when you need it which is in connection with a plan.